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**A Key Gap In Fighting Terrorism**  
*Private Firms Need Liability Protection*

By Mike McConnell  
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One of the most critical weapons in the fight against terrorists and other foreign intelligence threats -- the Foreign Intelligence Surveillance Act (FISA) -- has not kept up with the technology revolution we have experienced over the past 30 years. We are on the brink of bringing this 20th-century tool in line with 21st-century technology and threats. The Senate has passed a strong bill, by an overwhelmingly bipartisan margin, that would modernize FISA and do the right thing for those companies that responded to their country's call for assistance in its hour of need. It would also protect the civil liberties we Americans cherish. The bill is now before the House of Representatives.

For almost two years, we have worked with Congress to modernize FISA and ensure that the intelligence community can effectively collect the information needed to protect our country from attack -- a goal that requires the willing cooperation of the private sector. Unfortunately, there were significant gaps in our ability to collect intelligence on terrorists and other national security threats because the 1978 law had not been modernized to reflect today's global communications technology.

The Protect America Act, passed by Congress last August, temporarily closed the gaps in our intelligence collection, but there was a glaring omission: liability protection for those private-sector firms that helped defend the nation after the Sept. 11 attacks. This month, I testified before Congress, along with the other senior leaders of the intelligence community, on the continuing threats to the United States from terrorists and other foreign intelligence targets. We stated that long-term legislation that modernized FISA and provided retroactive liability protection was vital to our operations. The director of the FBI told the Senate that "in protecting the homeland it's absolutely essential" to have the support of private parties.

This is not news. Senior intelligence leaders have repeatedly testified that providing retroactive liability protection is critical to carrying out our mission. We are experiencing significant difficulties in working with the private sector today because of the continued failure to address this issue. As we noted before the House, if we do not address liability protection we "believe it will severely degrade the capabilities of our Intelligence Community to carry out its core missions of providing warning and protecting the country."

The Protect America Act was scheduled to expire Feb. 1, but Congress passed a 15-day extension to give itself the time lawmakers said was necessary to complete work on legislation to modernize FISA and address liability protection. President Bush signed that extension, but the law will expire tomorrow unless Congress acts again.

Some have claimed that expiration of the Protect America Act would not significantly affect our operations. Such claims are not supported by the facts. We are already losing capability due to the failure to address liability protection. Without the act in place, vital programs would be plunged into uncertainty and delay, and capabilities would continue to decline. Under the Protect America Act, we obtained valuable insight and understanding, leading to the disruption of planned terrorist attacks. Expiration would lead to the loss of important tools our workforce relies on to discover the locations, intentions and capabilities of terrorists and other foreign intelligence targets abroad. Some critical operations, including our ability to adjust to dynamic terrorist threats that exploit new methods of communication, which sometimes requires assistance from private parties, would probably become impossible. And the difficulties we face in obtaining this essential help from private parties would worsen significantly if the act expires or is merely extended without addressing this issue. Without long-term legislation that includes liability protection, we will be delayed in gathering -- or may simply miss -- intelligence needed to protect the nation.

These circumstances can be avoided. The Senate Select Committee on Intelligence, after an in-depth review of our operations, recognized on a bipartisan basis the importance of providing liability protection to those who assisted our nation in a time of great need. The committee's report stated that "without retroactive immunity, the private sector might be unwilling to cooperate with lawful government requests in the future without unnecessary court involvement and protracted litigation. The possible reduction in intelligence that might result from this delay is simply unacceptable for the safety of our Nation." We in the intelligence community agree. We urge Congress to act to ensure that we do not again have gaps or lapses in gathering intelligence necessary to protect the nation because of an outdated law or a failure to shield private parties from liability for helping to protect the nation.

*Mike McConnell is the director of national intelligence.*